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Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Contemporary Forms
of Slavery
Twentieth session
19-28 April 1995
Item 5 (b) of the provisional agenda

# REVIEW OF DEVELOPMENTS IN THE FIELD OF CONTEMPORARY FORMS OF SLAVERY AND MEASURES TO PREVENT AND ERADICATE ALL CONTEMPORARY FORMS OF SLAVERY

## ORGAN TRANSPLANT

Report of the Secretary-General prepared pursuant to Sub-Commission resolution 1994/5

CONTENTS


| | Paragraphs | Page |
|---|---|---|
| Introduction | 1 - 2 | 2 |
| I. GOVERNMENTS | 3 | 2 |
| Nepal | 3 | 2 |
| II. UNITED NATIONS ORGANS AND BODIES | 4 - 14 | 2 |
| A. United Nations Office at Vienna | 4 - 6 | 2 |
| B. World Health Organization | 7 - 14 | 3 |
| III. INTERGOVERNMENTAL ORGANIZATIONS | 14 - 15 | 6 |
| International Criminal Police Organization | 14 - 15 | 6 |


GE.95-12415 (E)

## Introduction

1. In its resolution 1994/5, paragraph 8, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Secretary-General to invite again all Governments, United Nations organizations and bodies, including the United Nations Children's Fund, the specialized agencies, in particular the World Health Organization, the International Criminal Police Organization and all relevant non-governmental organizations, including scientific and medical associations, to pursue their investigation of allegations that children are victims of, or are even killed for, the removal of organs for the purpose of commercial transplants and to indicate any measures taken to counteract this practice wherever it exists, with a view to presenting a report to the Working Group at its twentieth session.

2. Consequently, the Secretary-General sent, on 2 December 1994, notes verbales and letters to Governments and the above-mentioned United Nations bodies and organizations. The replies so far received are contained in the present document.

## I. GOVERNMENTS

### Nepal

[Original: English]
[30 January 1995]

3. The Government of Nepal stated that it had no knowledge or information on the alleged cases of removal of organs from children inside the Kingdom. Nevertheless, it will pursue an investigation into such allegations.

## II. UNITED NATIONS ORGANS AND BODIES

### A. United Nations Office at Vienna

[Original: English]
[14 February 1995]

4. The United Nations Crime Prevention and Criminal Justice Programme is concerned about the reports and allegations that children, and indeed any persons, have been victimized for the trafficking in body parts.

5. In its resolution 3/2, entitled "International traffic in minors", the Commission on Crime Prevention and Criminal Justice decided that international traffic in minors should be considered by the Commission in the context of the discussion on the question of organized transnational crime.

6. Furthermore, the Secretary-General in his report on the impact of organized criminal activities upon society at large (E/CN.15/1993/3) noted that at present, no country was able to meet the demand for organs adequately, and waiting lists were growing at a faster rate than the supply. For instance, an estimated 85 per cent of the patients accepted for dialysis in Ireland received transplants in the first year, whereas in the United States

only about 25 per cent of such cases resulted in transplants and in Japan the figure was less than 10 per cent. In the United States alone, statistics indicated that, as of June 1991, 24,000 people were on waiting-lists for transplants. In Australia, the number of people requiring kidney transplants was about 2,000 at the present time, with about 400 transplants performed each year. The average waiting time for such a transplant was three years. This was a situation which organized crime was bound to exploit, as resort to exploitative and criminal practices could generate high profits where the number of available organs was insufficient. The Director of the Australian Institute of Criminology was quoted as saying, "Not surprisingly, a black market ... has developed, in which organs fetch high prices". The large number of destitute and homeless persons, including children, found in urban areas, particularly in developing countries, provided a source of such transplant organs. The black market was bound to grow as technological advances extended the preservation of organs after removal, so that transport could be provided over long distances.

## B. World Health Organization

[Original: English]
[20 January 1995]

7. Although WHO has not endeavoured to compile information concerning the validity or otherwise of allegations that children are victims of the removal of organs for the purpose of commercial transplants, it has been actively concerned with monitoring international and national measures taken to counteract any forms of commerce in human organs, including any commercial transactions involving children. WHO's activities have been based on the mandate given to the Director-General in the field of organ transplantation by, in particular, World Health Assembly resolution WHA44.25 adopted on 13 May 1991.

8. WHO offices endeavour to monitor draft legislation on organ transplantation, with particular reference to provisions that address the issue of commerce. As a matter of example, a draft law on organ transplantation, submitted to the Japanese Diet on 12 April 1994, includes a detailed section 11 entitled "Prohibition on trade in organs" which reads as follows:

> "1. No person may accept or demand financial compensation for providing or having provided organs for transplantation purposes, nor make an agreement for such compensation.
>
> "2. No person may provide or demand financial compensation for the present or future acceptance of the supply of organs for transplantation purposes, nor make an agreement for such compensation.
>
> "3. No person may accept or demand financial compensation for serving or having served as an intermediary for the supply of organs for transplantation purposes, nor make an agreement for such compensation.

"4. No person may supply or demand financial compensation for the present or future acceptance of the action of an intermediary with a view to the supply, or acceptance of the supply, of organs for transplantation purposes.

"5. No person may remove or use organs for transplantation purposes if he is aware that the said organs have been the subject of a violation of any of the provisions of the preceding subsections.

"6. The compensation referred to in subsections 1-4 of this section does not include the costs of transportation or correspondence, or of the removal, preservation, and transfer of organs for transplantation purposes, the cost of transplantation, or the expenses normally considered as necessary for the supply, or acceptance of the supply, of organs for transplantation purposes, or the services of intermediaries in such procedures."

9. Section 12 of the draft law provides for the issuance of authorization by the Ministry of Health and Social Welfare to persons acting professionally as intermediaries for the supply of cadaveric organs for transplantation purposes. Details are given in sections 20 and 21 of the penalties that apply in the event of violation of the provisions of sections 11 and 12 respectively.

10. WHO publishes in the "International Digest of Health Legislation" examples of recent legislation on organ transplantation addressing the matter of commerce in human organs.

11. WHO has also been carefully monitoring international initiatives to combat commerce in human organs. In that regard, the General Assembly of the World Medical Association adopted a resolution entitled "Physicians' conduct concerning human organ transplantation" at Stockholm in September 1994, stating:

"Whereas there is a significant concern at the increasing number of reports of physicians participating in the transplantation of human organs or tissue taken from:

- the bodies of prisoners executed in application of a death sentence without previously obtaining their consent or giving them an opportunity to refuse; or

- the bodies of handicapped persons whose deaths are believed to have been expedited to facilitate the harvesting of their organs; or

- the bodies of poor people who have agreed to part with their organs for commercial purposes; or

- the bodies of young children kidnapped for this purpose; and

whereas in such cases the participation of physicians in direct contravention of the guidelines enunciated by the World Medical

Association in its Declaration on Human Organ Transplantation adopted in October 1987.

"Therefore be it resolved that the World Medical Association solemnly reaffirms those guidelines and calls upon all national medical associations to uphold them, and in the case of infraction of these guidelines to severely discipline the physicians involved."

12. Moreover, in the course of the XVth World Congress of the Transplantation Society held at Kyoto, Japan, from 28 August to 2 September 1994, the Society adopted a series of recommendations which read as follows:

"The Transplantation Society recommends:

"(i) All countries should enact legislation forbidding all commercial trafficking in tissues and organs.

"(ii) All countries should define brain death and its diagnosis and enshrine this concept in law including the requirement that the assessors of brain death are independent and free from and direct interest in the transplant procedure.

"(iii) All countries should ensure effective monitoring of tissue and organ transplantation through:

"(a) proper regulation of mortuary activity and of tissue banks;

"(b) certification of brain death by independent assessors;

"(c) signed and date certification by the surgeon removing the tissues and organs, stating (1) he/she witnessed the certification of brain death and (2) which tissues and organs have been removed. Copies of this documentation must be forwarded together with all tissues and organs;

"(d) full certification by the implanting surgeon, stating that (1) he/she has inspected the retrieval documentation and deemed it satisfactory and (2) has recorded the implantation of stated organs into specified individuals;

"(e) ensuring that tissues and organs not used are accounted for to relevant authorities;

"(f) the introduction of methods of registering and tracking all donors;

"(g) the approval and certification of transplant centres and teams by relevant government and/or medical professional authorities.

"The Transplantation Society further states that with respect to more general issues, its position remains unchanged:

"(a) organs and tissues should be freely given without commercial consideration or financial profit;

"(b) consent should be obtained;

"(c) Transplantation Society members should not be involved in obtaining or transplanting organs from executed criminals."

13. WHO draws the attention of the Working Group on Contemporary Forms of Slavery to the draft Bioethics Convention and the draft protocol on organ transplants drafted under the auspices of the Council of Europe in Strasbourg.

## III. INTERGOVERNMENTAL ORGANIZATIONS

### International Criminal Police Organization

[Original: English]
[19 January 1995]

14. INTERPOL declared that specific information has been provided by INTERPOL in Brazil which indicated that Brazilian children were adopted by foreign couples allegedly for the purpose of trafficking in human organs.

15. The sale of human organs is a very sensitive issue and countries affected by this form of criminal activity (such as South America and a number of Eastern European countries) are very reluctant to send relevant information on reported cases.

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# REVIEW OF DEVELOPMENTS IN THE FIELD OF CONTEMPORARY FORMS OF SLAVERY AND MEASURES TO PREVENT AND ERADICATE ALL CONTEMPORARY FORMS OF SLAVERY

## Report of the Secretary-General


| | Paragraphs | Page |
|---|---|---|
| Introduction | 1 | 2 |
| I. GOVERNMENTS | 2 - 10 | 2 |
| A. Brunei Darussalam | 2 | 2 |
| B. Nepal | 3 - 7 | 2 |
| C. Pakistan | 8 - 10 | 3 |
| II. UNITED NATIONS ORGANS AND BODIES | 11 - 21 | 3 |
| A. Office of the United Nations High Commissioner for Refugees | 11 - 18 | 3 |
| B. United Nations Educational, Scientific and Cultural Organization | 19 - 21 | 5 |
| III. INTERGOVERNMENTAL ORGANIZATIONS | 22 - 24 | 5 |
| International Organization for Migration | 22 - 24 | 5 |


GE.95-12418 (E)

## Introduction

1. The Secretary-General has received supplementary information relating to the various sub-items of item 5 of the provisional agenda. The information received is contained in the present document.

## I. GOVERNMENTS

### A. Brunei Darussalam

[Original: English]
[3 February 1995]

2. The Government of Brunei Darussalam stated that the issues concerning the traffic in persons and the exploitation of prostitution of others fortunately do not occur in Brunei Darussalam.

### B. Nepal

[Original: English]
[30 January 1995]

3. The Government of Nepal reported that appropriate social, economic, political and legal measures have been undertaken for the protection of vulnerable groups - children and women in the society. The Women Trafficking and Sale (Prevention) Act and the National Act are the main laws concerned with the rights and protection of vulnerable women, girl children and orphans. Under these laws persons convicted of trafficking in women are liable to a maximum penalty of life imprisonment. Similarly, the property rights of women have been guaranteed by the Constitution and the National Act.

4. The Labour Act also protects certain rights of women and children.

5. The Children's Act has added impetus to recognition of the rights of children in Nepal. The Act has played an important role in defining and defending some of the rights and privileges of the child. Its clauses protect and safeguard children's rights and stipulate a five years' penalty of imprisonment for the violation of these rights. Child labour is prohibited in industries and enterprises by law. All kinds of exploitation of children and women have been ended by the Constitution. Some welfare programmes for children, women and other backward castes and communities have been initiated and assured by the newly elected Government in various fields at the national level. Many non-governmental organizations have been also working in these fields.

6. The Children's Act and the Constitution strictly prohibit child labour which is monitored and checked by administrative vigilance. The Labour Act and Children's Act guarantee some of the rights of the child.

7. The new Government promised to initiate action for the elimination of bonded labour and debt bondage which still exist in the south-western parts of Nepal.

### C. Pakistan

[Original: English]
[30 January 1995]

8. The Government of Pakistan has communicated information relating to the enactment of the Bonded Labour Abolition Act of 1992.

9. Pursuant to the Bonded Labour Abolition Act, vigilance committees have been set up in all four provinces of Pakistan. These committees are on the lookout for any cases of bonded labour. Advertisements were published by the Government in all the national dailies requesting anybody having knowledge of the existence of bonded labour to inform the Government so that suitable measures could be taken for its abolition. So far, no case has been brought to the notice of the Government.

10. As regards the question of the number of people prosecuted under the Act, the information is being collected and will be submitted as soon as it is finalized.

## II. UNITED NATIONS ORGANS AND BODIES

### A. Office of the United Nations High Commissioner for Refugees

[Original: French]
[20 December 1994]

11. As part of its activities and in the wider context of efforts to combat contemporary forms of slavery, the Office of the United Nations High Commissioner for Refugees (UNHCR) takes a special interest in the problem of irregular adoptions. Unaccompanied refugee minors are a group at risk in this regard. Separated from their parents and without legal protection, unaccompanied refugee minors are obviously deprived of the protection normally offered by the family unit; they are therefore the group most in need of special protection and assistance and of durable solutions to their problems.

12. Refugee children, of whom unaccompanied minors are one component, represent over half of the refugee population throughout the world. Because of their special circumstances, they are without any doubt more vulnerable than other refugee groups.

13. UNHCR's policy and activities in respect of refugee children are based on the organization's guidelines (1988), which are themselves based on the Conclusions of the Executive Committee of the High Commissioner's Programme and the two fundamental international and universally recognized principles of the best interests of the child and family unity.

14. At its forty-third session (1992), the Executive Committee of the High Commissioner's Programme reiterated the importance it accorded to the protection and well-being of refugee children, in particular unaccompanied minors. It should be noted that the UNHCR guidelines on refugee children contain several specific provisions on the subject. The Convention on the Rights of the Child also contains provisions on refugees and on adoption. In

fact, the Convention is one of the fundamental legal texts on which UNHCR bases its activities for the defence of the rights of asylum-seeking and refugee minors. In addition, at the request of the UNHCR Executive Committee, the High Commissioner appointed a Senior Coordinator for Refugee Children, whose job is to work towards improving awareness of the needs of refugee children and designing an appropriate policy on refugee children. UNHCR is also seeking means of improving internal machinery on these issues. Its efforts focus on the submission of reports, particularly in the statistical area, and increasing the awareness of its central and regional officials of the protection needs of refugee children in the field. UNHCR also makes similar efforts in dealing with its heads of Field Missions so that they, too, will become aware of the importance of this task.

15. With regard to adoption, as noted in the Executive Committee's Conclusion No. 24 (XXXII) on Family Reunification, any decision on adoption involves a "severance of links with the natural family". In accordance with General Assembly resolution 41/85 of 3 December 1986 containing the "Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally", UNHCR believes that adoption should not be encouraged until the family situation of a refugee child has been determined with sufficient accuracy. UNCHR usually gives itself a minimum of two years to find the parents or relatives before the adoption of a refugee child placed in a foster family can be considered. When adoption or family placement takes place as a last resort and in accordance with the best interests of the refugee child, the process must be in conformity with the above-mentioned General Assembly resolution.

16. As to adoption for profit, UNHCR fully supports the views expressed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities that profit considerations should have absolutely no place in adoption matters. For its part, UNHCR continues to devote its attention to the question of irregular adoptions of refugee children by ensuring that the appropriate rules of protection are strictly applied and that adoptions are in no case conducted for profit.

17. UNHCR's general principle is that, with the exception of orphans, adoption should not at the outset be a solution for unaccompanied minors. It believes that adoption should be only a last resort. From that point of view, UNHCR is stepping up its efforts to encourage States to take the necessary measures for protecting unaccompanied minors. It is continuing to cooperate actively with the Special Commission of the Hague Conference on Private International Law with a view to preparing a convention for preventing irregular adoptions abroad. UNHCR sets the following conditions in that respect:

(a) Before deciding whether a refugee child can be adopted, the asylum State should make entirely sure (by using the resources and expertise of the appropriate local and international bodies and organizations) that every effort has been made to find the members of the unaccompanied child's family and that the child is legally free for adoption;

(b) In order to determine whether adoption abroad is in the best interests of the child, the possibility of the child's voluntary repatriation should be fully taken into consideration;

(c) Given the vulnerable situation of the refugee child, which includes the potentially uncertain nature of his status as asylum-seeker or refugee, any inquiries into his past or family situation should be conducted in the strictest confidentiality.

18. Lastly, UNHCR remains convinced that the tasks of protecting and assisting refugee children will be effective and successful only if close cooperation exists among all the components of the international community.

### B. United Nations Educational, Scientific and Cultural Organization

[Original: English]
[14 February 1995]

19. UNESCO is monitoring programmes to achieve universal access to education, such as the programme "Towards Basic Education for All", which contribute to the elimination of contemporary forms of slavery. The programme to enrol street children in schools aims at keeping them away from potential exploitation, including child labour. Education for international understanding, education for respect of human rights and education for democracy are other ways in which education can be used to combat contemporary forms of slavery.

20. UNESCO has no specific programme activities geared towards combating intolerable practices against children such as killing, organ removal, sale, paedophilia, etc. In order to contribute to the struggle against these practices the Director-General of UNESCO cooperates, on an ad hoc basis, directly with the national authorities of member States.

21. UNESCO also stated that no cases concerning sale of children, child prostitution or child pornography, the exploitation of child labour, bonded labour, traffic in persons or persons exposed to other kinds of contemporary forms of slavery have been submitted to the Committee on Conventions and Recommendations of the Executive Board which examines communications relating to questions concerning the exercise of human rights in the organization's field of competence.

## III. INTERGOVERNMENTAL ORGANIZATIONS

### International Organization for Migration

[Original: English]
[6 February 1995]

22. Contemporary forms of slavery traditionally fell beyond the mandate of IOM. However, the upsurge of trafficking in migrants and the slavery and slave-like conditions sometimes involved in the practice have placed the issue of slavery squarely on IOM's agenda. Governments in both countries of origin and countries of destination have expressed concern about the welfare of trafficked migrants during transit, as well as upon arrival in the country of destination.

23. From IOM's vantage point, several aspects of migrant trafficking could be of concern to the Working Group on Contemporary Forms of Slavery:

(a) Inhumane travel conditions in terms of sanitation, provisions and freedom of movement;

(b) Holding captive trafficked migrants until family/friends pay a fee;

(c) Forced labour in the country of destination, including forced prostitution.

24. In October 1994, IOM has organized a seminar on the International response to trafficking in migrants and the safeguarding of migrants rights to discuss, among other issues, current and new ways to curtail migrant trafficking and to protect migrants caught up in the practice. Participants at the meeting put forth several proposals in this regard, which were subsequently approved by the IOM Council:

(a) IOM, in conjunction with other international organizations and Governments, will establish a Working Group on Migrant Trafficking, because effective action to combat trafficking and protect migrants demands the coordination of IOM's work and that of other concerned bodies. The Working Group will exchange information and ideas and discuss current and future activities in order to maximize effectiveness and avoid duplication of work;

(b) IOM will host regional, as well as periodic global level meetings on trafficking. The regional forums will give concerned countries and other regional actors the opportunity to focus specifically on trafficking and protection issues particular to their region. The global meeting will enable the participants to inform each other on new trends and new policies related to trafficking and review the international dimensions of the issue;

(c) Funding permitting, IOM will revise existing and design new information campaigns for three audiences. First, IOM will expand information gathering and dissemination to policy makers and practitioners dealing with migrant trafficking and trafficking migrants. Secondly, IOM will further develop information campaigns which provide potential migrants with information on legal migrations options and the pitfalls of irregular migration. And finally, information programmes aimed at the general public in receiving countries will explain the benefits receiving countries enjoy from orderly migration;

(d) IOM will expand technical cooperation to countries of origin and transit who request assistance - human resources, equipment, information - in their fight against migrant trafficking;

(e) IOM will work with countries of origin and destination to establish temporary migration schemes in an effort to ease emigration pressure; and

(f) IOM will continue to offer assisted return programmes to offer irregular migrants a dignified alternative to deportation.

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